

§ 199.3

49 CFR Ch. I (10–1–14 Edition)

§ 199.3 Definitions.

As used in this part—

Accident means an incident reportable under part 191 of this chapter involving gas pipeline facilities or LNG facilities, or an accident reportable under part 195 of this chapter involving hazardous liquid pipeline facilities.

Administrator means the Administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.

Covered employee, employee, or individual to be tested means a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.

Covered function means an operations, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter that is performed on a pipeline or on an LNG facility.

DOT Procedures means the Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in part 40 of this title.

Fail a drug test means that the confirmation test result shows positive evidence of the presence under DOT Procedures of a prohibited drug in an employee's system.

Operator means a person who owns or operates pipeline facilities subject to part 192, 193, or 195 of this chapter.

Pass a drug test means that initial testing or confirmation testing under DOT Procedures does not show evidence of the presence of a prohibited drug in a person's system.

Performs a covered function includes actually performing, ready to perform, or immediately available to perform a covered function.

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positives, negatives, and refusals) under this part.

Prohibited drug means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act (21 U.S.C. 812): marijuana,

cocaine, opiates, amphetamines, and phencyclidine (PCP).

Refuse to submit, refuse, or refuse to take means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test.

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 *et seq.*)

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199–2, 54 FR 51850, Dec. 18, 1989; 59 FR 62227, Dec. 2, 1994; Amdt. 199–13, 61 FR 18518, Apr. 26, 1996; Amdt. 199–15, 63 FR 13000, Mar. 17, 1998; Amdt. 199–19, 66 FR 47117, Sept. 11, 2001; 68 FR 11750, Mar. 12, 2003; 68 FR 75465, Dec. 31, 2003; 70 FR 11140, Mar. 8, 2005]

§ 199.5 DOT procedures.

The anti-drug and alcohol programs required by this part must be conducted according to the requirements of this part and DOT Procedures. Terms and concepts used in this part have the same meaning as in DOT Procedures. Violations of DOT Procedures with respect to anti-drug and alcohol programs required by this part are violations of this part.

[Amdt. 199–19, 66 FR 47118, Sept. 11, 2001]

§ 199.7 Stand-down waivers.

(a) Each operator who seeks a waiver under § 40.21 of this title from the stand-down restriction must submit an application for waiver in duplicate to the Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590–0001.

(b) Each application must—

(1) Identify § 40.21 of this title as the rule from which the waiver is sought;

(2) Explain why the waiver is requested and describe the employees to be covered by the waiver;

(3) Contain the information required by § 40.21 of this title and any other information or arguments available to support the waiver requested; and

(4) Unless good cause is shown in the application, be submitted at least 60 days before the proposed effective date of the waiver.

(c) No public hearing or other proceeding is held directly on an application before its disposition under this section. If the Associate Administrator determines that the application contains adequate justification, he or she grants the waiver. If the Associate Administrator determines that the application does not justify granting the waiver, he or she denies the application. The Associate Administrator notifies each applicant of the decision to grant or deny an application.

[Amdt. 199-19, 66 FR 47118, Sept. 11, 2001, as amended at 70 FR 11140, Mar. 8, 2005; 74 FR 2894, Jan. 16, 2009]

§ 199.9 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this part is not possible;

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part; or

(3) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994. Redesignated and amended by Amdt. 199-19, 66 FR 47119, Sept. 11, 2001]

Subpart B—Drug Testing

§ 199.100 Purpose.

The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform covered functions for operators of certain pipeline facilities subject to part 192, 193, or 195 of this chapter.

[Amdt. 199-19, 66 FR 47118, Sept. 11, 2001]

§ 199.101 Anti-drug plan.

(a) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures. The plan must contain—

(1) Methods and procedures for compliance with all the requirements of this part, including the employee assistance program;

(2) The name and address of each laboratory that analyzes the specimens collected for drug testing;

(3) The name and address of the operator's Medical Review Officer, and Substance Abuse Professional; and

(4) Procedures for notifying employees of the coverage and provisions of the plan.

(b) The Associate Administrator or the State Agency that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 *et seq.*) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.206 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-2, 54 FR 51850, Dec. 18, 1989; Amdt. 199-4, 56 FR 31091, July 9, 1991; 56 FR 41077, Aug. 19, 1991; Amdt. 199-13, 61 FR 18518, Apr. 26, 1996; Amdt. 199-15, 63 FR 36863, July 8, 1998. Redesignated by Amdt. 199-19, 66 FR 47118, Sept. 11, 2001; Amdt. 199-25, 78 FR 58915, Sept. 25, 2013]

§ 199.103 Use of persons who fail or refuse a drug test.

(a) An operator may not knowingly use as an employee any person who—

(1) Fails a drug test required by this part and the medical review officer makes a determination under DOT Procedures; or

(2) Refuses to take a drug test required by this part.

(b) Paragraph (a)(1) of this section does not apply to a person who has—

(1) Passed a drug test under DOT Procedures;

(2) Been considered by the medical review officer in accordance with DOT Procedures and been determined by a substance abuse professional to have